

Federal Court



Cour fédérale

**Date: 20200327**

**Docket: IMM-2265-19**

**Citation: 2020 FC 447**

**Ottawa, Ontario, March 27, 2020**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**NKOLIKA OLUCHI DESMOND-UMEH  
DESMOND NNAEMEZIE UMEH  
BRIAN CHUKWUEZUGO DESMOND-UMEH  
(THROUGH HIS LITIGATION GUARDIAN  
NKOLIKA OLUCHI DESMOND-UMEH)  
ADRIEL CHINEMEZE DESMOND-UMEH  
(THROUGH HIS LITIGATION GUARDIAN  
NKOLIKA OLUCHI DESMOND-UMEH)**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Applicants are a Nigerian family who claim they will be persecuted if they return because the adult Applicants oppose having their daughter undergo female genital mutilation

(FGM). The Refugee Appeal Division (RAD) concluded that Applicants had an internal flight alternative (IFA) in Abuja. The Applicants claim that the IFA in Abuja is not viable as family members will find their location.

[2] For the reasons that follow, this judicial review is dismissed, as the decision of the RAD is reasonable.

### **Background**

[3] The Applicants are a family of Nigerian citizens who are also Igbo. The Principal Applicant, Ms. Desmond-Umeh (PA), arrived in Canada with her two sons in April 2017. Her husband, Mr. Umeh, arrived in January 2017. Ms. Desmond-Umeh gave birth to a daughter, Kairayochukwu Eliana Desmond-Umeh, on May 9, 2017 in Canada. Their daughter is not an applicant as she is a Canadian citizen.

[4] The Applicants claim they will be persecuted if they return to Nigeria and refuse to have their daughter to undergo FGM. Their refugee claim was denied by the Refugee Protection Division, which concluded that there was no serious possibility the Applicants faced persecution or that they would be personally subjected to the danger of torture or face a risk to life, or risk of cruel and unusual punishment in Nigeria.

[5] The Applicants appealed to the RAD.

## Decision under Review

[6] The RAD dismissed the appeal on March 21, 2019, and determined that they had an IFA to Abuja.

[7] The RAD found that the Applicants' concern that they were at danger of being located in Abuja was not consistent with the evidence. The RAD noted that the Applicants did not identify their agents of persecution. The Applicants claim that they would be required to attend a village where FGM occurs once a year, and that if they did not attend, people would come to rob them. The RAD found that this threat was speculative and that being robbed was not sufficient to constitute serious harm amounting to persecution.

[8] The adult Applicants also claim they will not be able to run their business with a daughter who has not undergone FGM. The RAD found that the evidence did not support such a finding, and if it did, the harm they would face is not "the type and degree of serious harm that is envisaged" by sections 96 and 97 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]*. The RAD found that the Applicants' evidence was "too general to be given weight".

[9] The RAD also noted that the evidence indicated that FGM can be refused and it was becoming less prevalent among Igbo girls. The RAD relied on the article "Current status of female circumcision among Nigerian Igbos" that said that out of 118 females, 109 were not circumcised. Based on this article, the RAD concluded that FGM is decreasing in popularity and that it is less likely that there is stigma and ostracism for families who do not force their daughters to undergo FGM.

[10] The RAD found that while FGM continues to exist in Nigeria, the issue was whether the parents of girls who do not undergo FGM would be persecuted as a result. The RAD acknowledged that there is possible harm associated with this choice, but that it did not rise to the level of a serious risk of persecution.

[11] The RAD further found that the Applicants' argument that they would not be able to run their business in Abuja is insufficient because an IFA does not rest on being able to perform a single type of work. The RAD found that due to their educational and work histories, the adult Applicants would not face economic difficulties in Abuja.

### **Issues**

[12] Although the Applicants raise a number of issues with the RAD decision, the issues are whether the decision is reasonable with reference to:

- 1) The ability to resist FGM.
- 2) The Internal Flight Alternative.

### **Standard of Review**

[13] The parties agree that reasonableness is the applicable standard of review.

[14] There is a presumption reasonableness applies as the standard of review for judicial review of administrative decisions (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]).

[15] To determine whether a decision is reasonable, the Court must “ask whether the decision bears the hallmarks of reasonableness - justification, transparency and intelligibility - and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). A “reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85).

## **Analysis**

### 1) *The ability to resist FGM*

[16] The Applicants argue that the RAD findings about the prevalence of FGM and parents being able to refuse FGM without consequences are not supported by the evidence in the record. They argue that the RAD was selective in the information it relied upon to support its conclusions.

[17] They say that despite the RAD’s finding that there has been a decrease in FGM, the evidence can be interpreted to indicate that, in fact, there is an increase in FGM. The Applicants also argue that the RAD failed to acknowledge that there are risks to parents who refuse FGM.

Again, the Applicants argue that there is information in the country condition documentation that contradicts the RAD's statement that the Applicants can refuse without consequences.

[18] The RAD noted that it preferred the information contained in the UK Home office Country Policy and Information Note Nigeria: Female Genital Mutilation (FGM).

[19] Further, a review of the information contained in the national documentation package demonstrates that the reports do not contain definitive statements on these issues. The documentary evidence indicates that information needs to be considered in the context of a particular case. The factors noted in the reports include reference to the fact that the better educated and more affluent the family, the better able they are to resist FGM. That is especially so if both parents oppose FGM. The information also indicates that parents most at risk of being forced to allow the procedure on girls are those who are young and illiterate. The RAD noted that this is not the profile of the adult Applicants.

[20] Here, the RAD reasonably concluded that as both parents oppose FGM, and are sophisticated, they would be able to protect their daughter. On this the RAD found:

The evidence is that parents can refuse, that there are Igbo offspring who are not circumcised, and that there is decreasing popularity...I prefer the objective evidence which is from neutral sources, consistent and is well-researched. The finding that one can refuse FGM decreases the likelihood that the Appellants would face repercussions tantamount to serious harm in Abuja.

[21] This is not a case where the RAD failed to address the conflicting country condition evidence as argued by the Applicants. Rather, the RAD noted the conflicting information, as

well as the directive that it had to consider the information in the particular factual context. The RAD then considered this evidence in relation to the Applicants' own particular circumstances.

[22] The Applicants also argue that the RAD overlooked contradictory information on state protection. They point to the information contained in the document "Whether parents can refuse female genital mutilation for their daughters; protection available to the child" which states: "... Even though the federal government is publicly opposed to FGM, it has not taken legal action to curb the practice ... Sources indicate that Nigeria does not have a federal law that criminalizes FGM, although some states have enacted legislation in this regard..." Further, the document states: "... Police will also consider it a family affair and refuse to interfere..."

[23] The Applicants argue that this statement contradicts the RAD's finding that the adult Applicants could refuse FGM for their daughter without consequences.

[24] However, as document indicates, much of this relies upon the particular circumstances of the family. This family does not have low socioeconomic status, nor is the PA a young single mother. The context of the particular family is an important consideration in assessing state protection. The RAD assessed the report differently than the Applicants, but it did not do so unreasonably.

## 2) *The Internal Flight Alternative*

[25] The Applicants argue that the RAD's finding that they have an IFA in Abuja is unreasonable because the RAD relied on select parts of the NDP in making this conclusion.

[26] The RAD found that the Applicants failed to rebut the IFA in Abuja because they were not able to establish serious risk of persecution or that it would be objectively unreasonable for them to relocate. Specifically, the RAD stated that being robbed for not visiting their village does not constitute the kind of serious harm necessary for persecution. The RAD also found that not being able to run their travel business would not amount to the “type and degree of serious harm envisaged by the sections 96 and 97 of the IRPA”, and that the stigma and ostracism the Applicants would face would not amount to persecution.

[27] The RAD also noted that whether it is reasonable for the Applicants to relocate to Abuja is not contingent upon being able to perform a certain type of work. The RAD also found that based upon their education and work histories, the Applicants would not face economic difficulties if they were to relocate.

[28] “To rebut an internal flight alternative, a refugee claimant must establish, on a balance of probabilities, that there is a serious risk of persecution in the cities where ... such alternative exists. The refugee claimant must also demonstrate that, in light of all the circumstances, the situation in that region of the country is such that it would be objectively unreasonable for him or her to seek refuge there” (*Singh v Canada (Citizenship and Immigration)*, 2017 FC 719 at para 12).

[29] Here the RAD applied the correct legal test and found that the threat of being robbed, the threat of not being able to run their business, and the threat of stigma and ostracism did not amount to persecution within the meaning of ss. 96 and 97 of *IRPA*. This is consistent with the



case law. In *Yurtal v Canada (Minister of Citizenship and Immigration)*, 2013 FC 949 at para 40, Justice Shore found that “for mistreatment to be considered ‘persecution’, it must meet two criteria: it must be serious and it must be repetitive or systematic.”

[30] The RAD acknowledged that the Applicants may not be able to establish their business in the IFA. However, the RAD found that this alone is not sufficient to render the IFA unreasonable. Although the inability to work in one’s chosen field may render an IFA unreasonable, it is not necessarily true in all instances (*Gallo Farias v Canada (Citizenship and Immigration)*, 2008 FC 1035, at para 34). The threshold to establish that an IFA is unreasonable “requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area and actual and concrete evidence of such conditions” (*Martinez de Argueta v Canada (Citizenship and Immigration)*, 2011 FC 369 at para 22).

[31] The Applicants have not described a situation in which their inability to work in their chosen field would jeopardize their life and safety. As the RAD noted, the Applicants’ education, work histories, and career accomplishments would protect against economic difficulties.

[32] Finally, the RAD noted that the Applicants state they are able to live safely in Lagos, which undermines their position that there is no IFA, and supports the possibility that there is more than one viable IFA. This is internally consistent with the finding that the harm the Applicants may face in Abuja does not amount to persecution.

[33] The Applicants have not demonstrated that they will face a serious risk of persecution in Abuja or that not being able to work in their chosen field would jeopardize their life and safety. Having failed to establish a serious risk of persecution, and having failed to rebut the reasonableness of the IFA, the only outcome that was open to the RAD was to dismiss their appeal.

### **Conclusion**

[34] In my view, the Applicants' arguments are essentially a request to have the evidence re-weighed. As noted by the Court in *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155, at para 17:

The role of this Court is not to re-weight the evidence that was before the RPD nor to interfere with the RPD's factual conclusions unless such conclusions were made in a perverse or capricious manner or without regard for the material that was before the RPD...

[35] In my view, this decision is in keeping with the direction provided in *Vavilov*, as the RAD decision demonstrates rationality and a clear analysis. The country condition information was not definitive; therefore, the RAD had to apply that information to the Applicants' particular circumstances. The RAD did so and outlined their analysis leading to their conclusion. The decision is therefore reasonable and there is no basis for this Court to intervene.

[36] This judicial review is dismissed. There is no question for certification.

**JUDGMENT IN IMM-2265-19**

**THIS COURT'S JUDGMENT is that** this judicial review is dismissed. There is no question for certification.

"Ann Marie McDonald"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2265-19

**STYLE OF CAUSE:** NKOLIKA OLUCHI DESMOND-UMEH ET AL v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

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**DATED:** MARCH 27, 2020

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